IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2169 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJIBEN W/O. SOMABHAI A MAKWANA & 1 - Petitioner(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MRS KRISHNA G RAWAL for Petitioner(s) : 1 - 2.

GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

None for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 24/01/2007

ORAL JUDGMENT

1. Heard learned Advocate Ms. Krishna Raval for the petitioner and Mr. Apurva Dave, learned AGP for Respondents.
2. Rule. Service of Rule is waived by learned AGP Mr. Apurva Dave on behalf of the respondent authorities. In the peculiar facts and circumstances of the case, the matter is taken up for final hearing with consent of both the learned Advocates.
3. Facts of the present petition are to the effect that the husband of petitioner no.1 was permanent employee of respondent, who, after putting service of more than sixteen years, died on 28.4.2001 while in service. His son, petitioner no.2 applied for appointment on compassionate appointment which was rejected on the ground that he has

not attained the age as per Government rules. However, it was clarified in the said letter that he can make application as soon as he attains the age of 18 years. Again his application was rejected by the authority on the ground that his earlier application was rejected and on the day of application, he was not eligible for compassionate appointment but if his mother inclines to join the service, she can apply. Petitioner NO.2 clarified his position to the authority but as they were not ready to hear him, petitioner no.1 applied for appointment on compassionate ground. Her application was also turned down on the ground that she is uneducated and hence she does not possess minimum qualification of SSC for the post of peon. Respondent NO.3 herein requested respondent NO.2 to give her appointment as per the GR on the post of sweeper, Paniwala etc. however, respondent no.1 and 2 were not giving the same.

4. Therefore, based on the aforesaid facts, petitioner preferred Special Civil Application NO. 9225 of 2006 before this Court wherein this court directed the respondents by order dated 26.9.2006 to reconsider case of the petitioner in light of notification dated 16.3.2005 in which service rules and policy dated 10.3.2000 remained in tact, not modified or corrected. Thereafter, petitioner made detailed representation on 12.10.2006 which was forwarded by respondent no.3 to respondent no.2 on 13.10.2006 and also requested respondent no.2 vide letter dated 7.11.2006 to consider the case of the petitioner. On 13.10.2006, respondent no.2 requested respondent no.1 to sanction compassionate appointment to the petitioner as a special case. However, respondent no.1 rejected application on 16.12.2006 on the ground that she is not having requisite qualification of Matriculation as per GR dated 16.3.2005 and,

therefore, present petition has been filed by petitioner before this Court.

5. I have considered the averments made by petitioner in the memo of petition as well as the submissions made by the learned Advocates for the parties.

6. While disposing of the earlier petition being Special Civil Application NO. 9225 of 2006 on 26.9.2006, this court has made observations in para 12 page 64 as to how the respondents should consider representation of the petitioner. Said observations are reproduced as under:

“12. In view of these submissions made by learned Advocate, Ms.Krishna Raval and considering the decisions which have been relied by her and also keeping in mind the fact that notification dated 16.3.2005 is relate to the Service Rules and policy is dated 10.3.2000 remained intact, not modified, not cancelled, then, in light of this factual aspect, the respondent shall

have to re-consider the decision, therefore, it is open for the petitioners to make detailed representation to the respondent along with the decisions which have been relied upon which will be supplied by petitioners to the respondent, within a period of 15 days from the date of receiving the copy of this order. As and when respondent receives the copy of representation from the petitioners, it is directed to respondent to re-consider the decision in light of decisions which have been relied upon by petitioners and also consider, whether notification dated 16.3.2005 which has been issued under Article 309 of the Constitution will apply to the policy of compassionate appointment dated 10.3.2000 or whether policy decision dated 10.3.2000 has been in any way has been cancelled, replaced by some other policy or not and to pass appropriate reasoned order in accordance with law within a period of two

months from the date of receiving the representation from the petitioners. ”

7. In view of the above observations made by this court, representation of the petitioner has been examined by the respondents and by letter dated 16.12.2006, rejected case of the petitioner. Upon perusal of the order dated 16.12.2006, the respondents have not considered the case of the petitioner on the ground whether notification dated 16.3.2005 is applicable to the case of the petitioner or not because father of the petitioner expired on 28.4.2001. Therefore, directions were issued to the respondents to consider the case of the petitioner on the basis of the policy prevailed at the relevant time when the application was made by the petitioner or on the date on which father of the petitioner expired. If the policy is changed subsequently, then, such change would not apply with retrospective effect to the case of the petitioner. However, respondents

rejected case of the petitioner for compassionate appointment without appreciating the observations made by this court in their proper perspective and came to the conclusion that the notification dated 16.3.2005 which is amending the educational qualifications for the post of Class IV is automatically applicable even in the matter of compassionate appointment also. According to my opinion, such finding is contrary to the observations made by this court. Policy for giving appointment to the dependents of the deceased employee and direct recruitment in the Government both are different things and both are different features which is required to be appreciated and considered by the respondents according to the policy which was prevailing at the relevant time when the concerned employee died or application for such appointment was made, by the concerned dependent of such employee. Therefore, the findings given by the respondent authority in

order dated 16.12.2006 for rejecting the case of the petitioner for such appointment on compassionate ground are contrary to the observations made and the decision has not been taken into account by the respondents while examining representation of the petitioner. Therefore, this order is required to be set aside.

8. Recently, this aspect has been examined by the apex court in ABHISHEK KUMAR V/S. STATE OF HARYANA & ORS. reported in 2006 (13) SCALE page 658 dated 4th December, 2006. In the said judgment, the apex court has considered that in such cases of compassionate appointment, when the deceased employee expired and application is made by the dependent for such compassionate appointment, whether the rules prevailing on the relevant date of death are applicable or the subsequent rules are applicable to the case of the petitioner. Apex court held that the rules prevailed at the time when the employee died have to be

considered while examining matter for compassionate appointment. In the facts of the present case, employee expired on 28th April, 2001 and, thereafter, immediately application was filed by the petitioner which was turned down only on the ground that the petitioner was not major at that time and, therefore, in this case the respondents shall have to consider the case of the petitioner for appointment on compassionate ground only on the basis of the policy prevailing at the relevant time and not on the basis of GR dated 16.3.2005. The apex court observed as under in para 5 of the judgment:

> "5. Appellant herein had sought for appointment on compassionate grounds at a point of time when 2003 rules were not in existence. His case, therefore, was required to be considered in terms of the Rules which were in

> existence in the year 2001. Evidently, in the State of Haryana, a State wise list is maintained. In terms of the said list so maintained by the State of Haryana, the appellant was entitled to obtain an appointment on compassionate ground. He was offered such an appointment by the State. It was the District Magistrate who came on the way and refused to provide for the post. “

9. In view of the aforesaid observations made by the apex court and in the facts of the present case wherein also, the respondents have by placing reliance on the subsequent change in the rule/policy, rejected the application of the petitioner for compassionate appointment by order dated 16.12.2006, therefore, order dated 16.12.2006 is required to be set aside.

10.Accordingly, order dated 16.12.2006 is hereby quashed and set aside with a direction to the respondents to reconsider the case of the petitioner on the basis of the policy prevailed at the time when the concerned employee expired, meaning thereby, policy dated 10th March, 2000/7th September, 2002 and not to consider the GR dated 16.3.2005 while examining the case of the petitioner for compassionate appointment. Respondents shall have to reconsider the matter a fresh within two months from the date of receipt of copy of this order and the respondents shall have to consider the decision which has been relied upon by this Court as referred to above and then to pass appropriate well reasoned order only on the basis of the policy prevailing at the relevant point of time within the period stipulated herein above and to communicate decision to the petitioner immediately thereafter.

11.Rule is made absolute in terms indicated herein above. There shall be no order as to costs.

(H.K. Rathod,J.)

Vyas